RECENT ENGLISH DECISIONS.

Vice-Chancellor Wood's Court.

THE SOLICITORS AND GENERAL LIFE ASSURANCE SOCIETY *vs.* LAMB

A policy of life insurance is conditioned to be void in certain events, "except to the extent of any interest acquired therein by assignment for valuable consideration." The insurer mortgages the policy, together with real estate; afterwards the policy is avoided under the condition. The society is compelled by the mortgagee to pay him the policy, and it then files a bill to take his place as against the other property comprised in the mortgage:

Held, that such a claim cannot be sustained; the contract being, not one of security or indemnity, but for payment of a given sum in certain events.

The circumstances of this case were as follows:

F. Lamb had effected two policies of insurance on his life with the plaintiffs, dated the 7th September 1853, and the 29th December 1853, to the amount of 1500*l.*; and by certain deeds of mortgage and further charge of the 23d September 1853, and the 28th November 1854, comprising considerable freehold and copyhold estates, he had assigned as collateral security these policies to Ridgway to secure sums amounting in the whole to 8000*l.*

He had also subsequently assigned the same policies to other parties by way of indemnity for sums paid on his account, into the particulars of which it is not necessary to enter.

The fourth condition of the policies was, "that if any person who had insured his own life should die by duelling or by his own act, whether felonious or not, or by the hands of justice, the policy should become void, except to the extent of any interest acquired therein by actual assignment by deed for valuable consideration, or as security or indemnity, or by virtue of any legal or equitable lien as security for money, upon satisfactory proof to the board of directors of the existence and extent of such interest."

F. Lamb died by his own hand, in a fit of mental aberration, on the 8th February 1861, leaving a will by which his widow, the defendant, was appointed executrix; and at the expiration of the three months fixed by the conditions of the policy of insurance, Ridgway, the mortgagee, commenced an action against the plain-

tiffs, of course in the name of the executrix, to recover the sums due upon the policies. A correspondence ensued between the plaintiffs' solicitors and the defendants, in which the former stated, that as the mortgage securities included property to a large amount in addition to the policies, the insurance society intended to have the question of their rights decided by a court of equity; they were, however, willing to pay the policy moneys to the mortgagees towards the discharge of the mortgages, giving them notice at the same time not to part with the securities.

The defendant's solicitor, acting also for the mortgagee, in reply, assented to receive the money, but declined to enter into any agreement by which the equitable rights of the parties might be altered; they stated that they could therefore only advise the mortgagee to hold his securities until his principal and interest were paid.

The money due on the policies (1585*l.* 19*s.* 7*d.*) was ultimately paid to the mortgagee with the concurrence of the executrix.

The company now filed their bill, praying a declaration that they were entitled (subject to the charges) to a charge upon the freehold and copyhold hereditaments comprised in the several mortgage and indemnity deeds to the extent of the sum paid by them to the mortgagee with interest at 4 per cent.; or, in the alternative, that such sum and interest might be apportioned among the freehold and copyhold hereditaments and the policies, and that the plaintiffs might be declared entitled to the difference (if any) between the sum paid by them (1585*l.* 19*s.* 7*d.*) and the amount for which the policies, taken rateably as against freeholds and copyholds, were a security.

Rolt, Q. C., and *Surrage* (for *H. Stevens*), for the plaintiffs, contended that it was contrary to the policy of the law, as well as to the terms of the contract in this case, to allow the estate of an insurer who had thus violated the condition of the policy to derive any benefit from it. Here the mortgagee had two kinds of security; he chose to exhaust the one for the benefit of the other, but the plaintiffs, who, but for the mortgage, would have been under no liability on the policy, were entitled to take the place of

the mortgagee in respect of the security which he had elected not to pursue. This case was to be distinguished from *Cook* vs. *Black*, 1 Hare 390, for there the policy was the only security. They also referred to *The Amicable Society* vs. *Bolland*, 2 D. & C. 1.

Giffard, Q. C., and *Osborne Morgan*, for the defendants, argued that the court must look only at the terms of the contract; the plaintiffs undertook certain risks, one of which was that the amount secured on the policy should under any circumstances be paid to the extent to which it might have been made the subject of assignment for valuable consideration. To entitle them to recover against the estate of the insurer must be the subject of express stipulation. It was impossible to maintain that policies of life insurance were in the nature of contracts of suretyship or indemnity: *Dalby* vs. *The India and London Life Assurance Company*, 18 Jur. 1025; *Bolland* vs. *Disney*, 3 Russ. 351. In case of a sale out and out, or of a mortgage of the policy solely, it was clear the plaintiffs could not have set up any claim like the present. The plaintiffs must go so far as to say that in case of a deficiency of the freeholds and copyholds, they would be entitled to recover out of the insurer's general estate. It was a rule that the policy was to be construed most strongly against the insurance company: *Dufaur* vs. *The Professional Life Assurance Company*, 25 Beav. 599.

Rolt, in reply, maintained that by expression of, or by necessary implication from, the terms of the contract, this policy was absolutely void *quoad* the insurer; the only question was, what were the rights of the parties in the absence of assignment?

VICE-CHANCELLOR WOOD said that the question raised in this suit was undoubtedly new, the only case that at all touched upon it being that of *Cook* vs. *Black*. There were two points to be considered: first, what was the position of the parties in the first instance; secondly, how was that position affected by the payment of the money to the mortgagee. He considered no question could arise upon the correspondence as containing any agreement which

should affect the rights of the parties in equity. First, then, the terms of the policy were, that in the event which had happened it should be void except to a certain extent, namely, the amount for which it stood as security by the assignments. A period, therefore, must be fixed at which that amount should be ascertained. This policy was understood to be payable at the expiration of three months from proof of the death of the insured; that was accordingly the period for ascertaining its value, which would then be the extent of the interest of the assignee. Looking, in the next place at the object of these contracts, he was of opinion that they were not merely for the benefit of the insurer's estate after his death, but, in the language of WIGRAM, V. C., in *Cook* vs. *Black*, to be used as an negotiable security; and the condition relative to assignment was intended to give it more value as such. In all these cases it was of importance to look at the words of the condition, and those used in the present instance made the case much stronger in favor of the defendant than the expressions in the case referred to. There it was said that if the interest of the parties claiming under an assignment were less than the sum insured, they should be "indemnified" to the extent of such interest, thus affording some ground for the contention that the policy was in the nature of a contract for indemnity, and gave rise to an inquiry as to what other securities were in the hands of the mortgagee. That could not be maintained in the present case. Now it was clear that, looking at the general object of these policies, and the terms of that before him, upon an assignment of the entire interest by way of sale, the society could, in the event that had happened in the present case, have no claim to recover the amount which they would be bound to pay from the estate of the insurer; so also in the case of a mortgage of the policy alone. He had, therefore, only to consider whether there was anything in the circumstance that other securities were included with the policy, to entitle to place the society in a different position; he could not see that there was anything in this circumstance. The only question to be asked was, what was the "extent of the interest acquired as security?" In the present case that was to

the extent of the whole policy at the period when the claim became payable. Secondly, the money having been actually paid by the society, he thought the position was still less favorable. It might be a question whether, before payment, they might have filed a bill to redeem, or to charge the other securities. But when the period at which the value of the policy was to be ascertained had gone by, there could be no taking a proportion between the two sorts of securities; the real estate might have increased or decreased in value, and the whole state of things have been altered. This consideration disposed of the alternative part of the plaintiffs' prayer. On the whole case the plaintiffs had failed, and this bill must therefore be dismissed with costs.

Rolls Court.

ABADAM *vs.* ABADAM.

A testator directed an annuity to be paid out of his personal estate "without any deduction whatever:"—Held, that the income tax was payable by the annuitant.

The question in this case was, whether an annuity of 500*l.* directed by a testator to be paid out of his personal estate, "without any deduction whatever, was payable free from income tax."

Selwyn, Q. C., for the trustees.—The language in the case of *Festing* vs. *Taylor*, 3 B. & S. 235, reversing 3 B. & S. 217, which would be relied upon on the other side, was much stronger; for there the rent-charge was directed to be paid, free from all deductions and assessments, whether imposed upon the rent-charge or on the owner of the rent-charge. Income tax was imposed upon the person, and was not properly a "deduction."

Cole, Q. C., for the annuitant.—An annuity payable out of personal estate stood on a different footing from a rent-charge issuing out of land; and this distinction was drawn in the 5 & 6 Vict. c. 35, ss. 89 and 102 (Income Tax Act). *Festing* vs. *Taylor* was a direct authority in favor of the annuitant.

Selwyn, in reply.